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**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2004-1112

TAMMY D. ERCOLI
106 Forrest Way
Martinez, CA 94553

ACCUSATION

Vocational Nursing License No. VN 168187

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

2. On or about July 13, 1994, the Board of Vocational Nursing and
Psychiatric Technicians issued Vocational Nursing License Number VN 168187 to Tammy D.
Ercoli (Respondent). The Vocational Nursing License was in full force and effect at all times
relevant to the charges brought herein and will expire on January 31, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and
Psychiatric Technicians under the authority of the following laws. All section references are to
the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nursing license for any reason provided in Article 3 (commencing with section 2875 of the Code) of the Vocational Nursing Practice Act.

5. Section 118(b) of the Code provides that expiration of a license shall not deprive the Board of jurisdiction to proceed with disciplinary action in any period within which the license may be renewed, restored, reissued or reinstated. Section 2892.1 of the Code allows that the Board may renew an expired license at any time within four years after its expiration.

6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 2878 of the Code states, in pertinent part:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

...

"(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

"(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

8. California Code of Regulations, title 16, section 2521, states in part:

"For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his [or her] license in a manner consistent with the public health, safety, or welfare. . . ."

1 9. Section 2878.5 of the Code states, in pertinent part:

2 “In addition to other acts constituting unprofessional conduct within the meaning
3 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
4 licensed under this chapter to do any of the following:

5 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
6 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or
7 administer to another, any controlled substance as defined in Division 10 of the Health and
8 Safety Code [commencing with section 11000], or any dangerous drug as defined in Article 8
9 (commencing with Section 4021) of Chapter 9 of Division 2 of this code.

10 “(b) Use any controlled substance as defined in Division 10 of the Health and
11 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
12 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
13 or to the extent that the use impairs his or her ability to conduct with safety to the public the
14 practice authorized by his or her license.

15 “(c) Be convicted of a criminal offense involving possession of any narcotic or
16 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
17 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
18 conclusive evidence thereof.

19 10. Health and Safety Code section 11170 provides that no person shall
20 prescribe, administer, or furnish a controlled substance for himself or herself.

21 11. Health and Safety Code section 11550, in pertinent part, makes it unlawful
22 for any person to use or be under the influence of any controlled substance in Schedule II (Health
23 and Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V,
24 except when administered by or under the direction of an authorized licensee.

25 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

26 12. Section 4021 of the Code states:

27 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing
28 with Section 11053) of Division 10 of the Health and Safety Code.”

13. Section 4022 of the Code states, in pertinent part:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import.

• • •

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

14. **Methamphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

FACTUAL BACKGROUND

16. On or about June 2, 2004, Respondent's residence, which she shared with an individual then on criminal parole, was searched on suspicion of drug possession and sales. In the course of the search, Respondent was contacted by officers of the Santa Cruz County Sheriff, who detected in Respondent physical signs of drug use, and to whom she admitted that she had smoked **methamphetamine** earlier in the day. A urine sample from Respondent tested positive for presence of **methamphetamine**. Respondent was arrested on charges of violating Health and Safety Code section 11550 (use/being under the influence of controlled substances).

17. On or about June 3, 2004, in a case titled *People v. Tammy Del Ercoli, with Wayne Vernon Spann*, Case No. M23550 in Santa Cruz County Superior Court, Respondent was charged with violating Health and Safety Code section 11550, subdivision (a) (under the influence of controlled substance - **methamphetamine**), a misdemeanor.

1 18. On or about June 28, 2004, Respondent entered a plea of guilty, and was
2 referred and accepted for Proposition 36 disposition. Accordingly, imposition of sentence was
3 suspended in favor of formal probation for 36 months, on terms and conditions including drug
4 rehabilitation treatment, fines and fees, search conditions, and an AIDS Education Program.

5 19. On or about August 6, 2004, Respondent appeared in Superior Court on a
6 probation violation in Case No. M23550, that was denominated her "first strike." Respondent
7 admitted the (unspecified) violation, and her probation was reinstated.

8 20. On or about January 12, 2005, Respondent appeared in Superior Court on
9 a probation violation in Case No. M23550; her "second strike." Respondent admitted to a drug
10 relapse before testing was performed, and her probation was once again reinstated.

11 21. On or about February 2, 2005, Respondent appeared in Superior Court on
12 a probation violation in Case No. M23550. Respondent denied the violation, but a drug test on
13 this date came back positive, confirming her relapse. On or about February 8, 2005, Respondent
14 admitted the probation violation, which was denominated her "third strike." She was terminated
15 from Proposition 36 eligibility, and remanded for service of 90 days in custody (8 days CTS).
16 On or about March 10, 2005, the sentence was modified to 30 days in custody, suspended.

17 22. On or about June 20, 2005, in a case titled *People v. Tammy Del Ercoli*,
18 Case No. M28952 in Santa Cruz County Superior Court, Respondent was charged with violating
19 Penal Code section 476a, subdivision (a) (fraudulently writing check on insufficient funds), a
20 misdemeanor, on the basis of two insufficient funds checks written between July 24 and August
21 16, 2004 to Ralph's grocery store(s), the second of which was written after the account closed.

22 23. On or about July 18, 2005, Respondent failed to appear for arraignment in
23 Case No. M28952, and a Warrant of Arrest issued in her name setting bail at \$5,000.00. That
24 Warrant of Arrest remains active, and Respondent has not yet been apprehended.

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DISCIPLINE CONSIDERATIONS

28. To determine the degree of discipline, if any, to be imposed hereunder on Respondent, Complainant alleges that on or about October 7, 1997, Respondent was convicted in three separate criminal cases of several felony and misdemeanor violations.

a. First, in a case titled *People v. Tammy Dale Allen*, Case No. 166020-8 in Contra Costa County Superior Court, Respondent entered pleas of no contest to: (i) two felony counts of violating Penal Code section 496, subdivision (a) (receiving stolen property), based on her February and March 1995 conduct of knowingly receiving, concealing, and/or withholding stolen personal/business checks; (ii) four felony counts of violating Penal Code section 475a (possession of completed check or money order with intent to defraud), based on her March 1995 acts of possessing and intending to pass fraudulent checks; and (iii) one felony count of violating Penal Code section 470 (forgery), based on her February 1995 conduct of forging a check. On or about October 7, 1997, Respondent was sentenced to a period of probation of two years, on terms and conditions including 180 days in county jail with credit for 20 days served (possible release to residential treatment after serving ½ sentence), fines and fees, and victim restitution.

b. Second, in two separate cases titled *People v. Tammy Dale Allen*, Case No. 165422-7 in Contra Costa County Superior Court, and *People v. Tammy Dale Allen*, Case No. 165744-4 in Contra Costa Superior Court, Respondent jointly entered plea(s) of no contest to one or more misdemeanor count(s) of violating Penal Code section 496, subdivision (a) (receiving stolen property), based on her acts in December 1994 of knowingly receiving, concealing and/or withholding stolen credit cards, drivers' licenses, and checks, and in January 1995 of knowingly receiving, concealing and/or withholding a stolen car. On or about October 7, 1997, Respondent was sentenced to a period of probation of two years, on terms and conditions including 90 days in county jail with credit for 20 days served (possible release to residential treatment after serving ½ sentence) - to run concurrent with Case No. 166020-8, fines and fees, and victim restitution.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
4 Technicians issue a decision:

- 5 A. Revoking or suspending Vocational Nursing License Number 168187,
6 issued to Tammy D. Ercoli (Respondent);
7 B. Ordering Respondent to pay the Board reasonable costs of investigation
8 and enforcement of this case, pursuant to Business and Professions Code section 125.3;
9 C. Taking such other and further action as is deemed necessary and proper.

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11 DATED: March 6, 2008

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14 TERESA BELLO-JONES, J.D., M.S.N., R.N.
15 Executive Officer
16 Board of Vocational Nursing and Psychiatric Technicians
17 Department of Consumer Affairs
18 State of California
19 Complainant

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